

48A C.J.S. Judges § 286

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

2. Interest and Relationship

a. Interest

(3) Particular Interests

§ 286. Common interest; status as citizen or taxpayer

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  42, 44

In the absence of statute, the interest of a judge in common with other taxpayers or residents in a public matter does not disqualify the judge from acting in the matter on the ground of interest, but the judge is disqualified if the judge has a direct pecuniary or property interest in the litigation even though such interest arises from the judge's status as a taxpayer or resident.

Generally, an interest which a judge has in common with many others in a public matter is not sufficient to disqualify the judge.¹ Where the interest of a judge as a resident, taxpayer, or property owner is not direct or immediate but remote or contingent, such interest ordinarily is not sufficient per se to disqualify the judge.² Thus, a judge is not disqualified to hear and determine a cause

in which a municipality, county, or other subdivision of the state is interested merely because the judge is a resident³ or taxpayer⁴ or both⁵ of such political subdivision, especially where the municipality or county as a public corporation is not directly interested.⁶

In the absence of showing that a judge has a direct pecuniary interest in the case,⁷ a judge is not disqualified in a condemnation case because of a common interest in the proceedings along with other citizens.⁸ Additionally, a judge is not disqualified from hearing a case that may affect a public utility or regulated utility of which the judge is a customer.⁹ Also, a judge is not disqualified where the act which the judge is requested to direct is considered to be ministerial in nature.¹⁰ It is not a ground for disqualification to act in a particular suit that the judge, as a taxpayer, could have brought the suit if others had neglected or refused so to do.¹¹

If the interest of a judge in a matter before the judge is a direct pecuniary or property interest, although arising by reason of the judge's being a resident or taxpayer, it may be sufficient to disqualify the judge.¹² If the litigation directly affects the taxable property of the judge, the judge is generally disqualified.¹³ If the judge has a direct pecuniary interest in the result of the suit, in that the judge is bound by the decree or has the right to take the benefit thereof, the judge is generally regarded as disqualified¹⁴ although the judge is not a party to the suit¹⁵ but merely a quasi party having a right to come in.¹⁶

Under statute.

By force of some statutory provisions, a judge is not disqualified by interest as a resident or taxpayer in any municipality or county that is a party to proceedings before the judge,¹⁷ and it is within the power of the legislature so to declare or provide.¹⁸

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- 1 U.S.—*In re City of Houston*, 745 F.2d 925, 40 Fed. R. Serv. 2d 800 (5th Cir. 1984).
Colo.—*Zoline v. Telluride Lodge Ass'n*, 732 P.2d 635 (Colo. 1987).
- 2 U.S.—*In re City of Houston*, 745 F.2d 925, 40 Fed. R. Serv. 2d 800 (5th Cir. 1984).
N.Y.—*Langdon v. Town of Webster*, 270 A.D.2d 896, 706 N.Y.S.2d 547 (4th Dep't 2000).
- 3 Cal.—*Tocque v. Superior Court in and for San Diego County*, 64 Cal. App. 494, 222 P. 181 (2d Dist. 1923).

Fla.—*Peters v. Meeks*, 171 So. 2d 562 (Fla. 2d DCA 1964).

Tex.—*Nueces County Drainage and Conservation Dist. No. 2 v. Bevely*, 519 S.W.2d 938 (Tex. Civ. App. Corpus Christi 1975), writ refused n.r.e., (July 9, 1975).

Flooding after hurricane

A judge who worked and resided in New Orleans did not have a disqualifying financial interest in litigation arising out of canal levee and/or floodwall breaches and subsequent flooding which occurred after a hurricane struck New Orleans that would warrant a recusal where the judge's residence was not flooded, and he suffered no economic loss.

U.S.—*Berthelot v. Boh Bros. Const. Co., L.L.C.*, 431 F. Supp. 2d 639 (E.D. La. 2006).

4 U.S.—*Fairley v. Andrews*, 423 F. Supp. 2d 800 (N.D. Ill. 2006).

5 Fla.—*State v. Sarasota County*, 118 Fla. 629, 159 So. 797 (1935).

Tex.—*Nueces County Drainage and Conservation Dist. No. 2 v. Bevely*, 519 S.W.2d 938 (Tex. Civ. App. Corpus Christi 1975), writ refused n.r.e., (July 9, 1975).

6 Mass.—*Inhabitants of Northampton v. Smith*, 52 Mass. 390, 11 Met. 390, 1846 WL 4024 (1846).

7 Ark.—*Arkansas State Highway Commission v. Conway Development Corp.*, 244 Ark. 988, 428 S.W.2d 291 (1968).

Tex.—*Texas Elec. Service Co. v. Boyce*, 486 S.W.2d 111 (Tex. Civ. App. El Paso 1972).

8 Ark.—*Arkansas State Highway Commission v. Conway Development Corp.*, 244 Ark. 988, 428 S.W.2d 291 (1968).

Tex.—*Texas Elec. Service Co. v. Boyce*, 486 S.W.2d 111 (Tex. Civ. App. El Paso 1972).

9 Tex.—*Fuelberg v. State*, 410 S.W.3d 498 (Tex. App. Austin 2013).

10 Fla.—*State ex rel. Elston Bank & Trust Co. v. Tedder*, 118 Fla. 329, 159 So. 26 (1935).

11 Cal.—*Cuyamaca Water Co. v. Superior Court of State of California In and For San Diego County*, 193 Cal. 584, 226 P. 604, 33 A.L.R. 1316 (1924).

12 Colo.—*Russell v. Wheeler*, 165 Colo. 296, 439 P.2d 43 (1968).

Ga.—*City of Valdosta v. Singleton*, 197 Ga. 194, 28 S.E.2d 759 (1944).

13 Ala.—*City of Mobile v. Grayson*, 220 Ala. 349, 125 So. 221 (1929).

Okla.—*State ex rel. Richardson v. Keen*, 1939 OK 407, 185 Okla. 539, 95 P.2d 120 (1939).

14 Okla.—*Mackey v. Crump*, 1915 OK 1099, 49 Okla. 578, 153 P. 1128 (1915).

W. Va.—*City of Grafton v. Holt*, 58 W. Va. 182, 52 S.E. 21 (1905).

15 W. Va.—*City of Grafton v. Holt*, 58 W. Va. 182, 52 S.E. 21 (1905).

16 W. Va.—*City of Grafton v. Holt*, 58 W. Va. 182, 52 S.E. 21 (1905).

17 Fla.—*State v. Call*, 41 Fla. 442, 26 So. 1014 (1899).

18

N.M.—Gutierrez v. Middle Rio Grande Conservancy Dist., 1929-NMSC-071, 34 N.M. 346, 282 P. 1, 70 A.L.R. 1261 (1929).

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.